

Calendar No. 293

97TH CONGRESS
1ST SESSION

S. 391

[Report No. 97-201]

To amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources and to direct the President to establish procedures to protect the secrecy of these intelligence relationships.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 5), 1981

Mr. CHAFEE (for himself, Mr. GOLDWATER, Mr. BENTSEN, Mr. DANFORTH, Mr. DOMENICI, Mr. GARN, Mr. GLENN, Mr. HAYAKAWA, Mr. JACKSON, Mr. LAXALT, Mr. LUGAR, Mr. NUNN, Mr. PRESSLER, Mr. ROTH, Mr. SCHMITT, Mr. SIMPSON, Mr. WALLOP, Mr. HATCH, Mr. HUDDLESTON, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 6 (legislative day, SEPTEMBER 9), 1981

Reported by Mr. DENTON, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources and to direct the President to establish procedures to protect the secrecy of these intelligence relationships.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Intelligence Identities
4 Protection Act of 1981”.

5 SEC. 2. (a) The National Security Act of 1947 is
6 amended by adding at the end thereof the following new title:
7 “TITLE VI—PROTECTION OF CERTAIN NATIONAL
8 SECURITY INFORMATION

9 “PROTECTION OF IDENTITIES OF CERTAIN UNITED
10 STATES UNDERCOVER INTELLIGENCE OFFICERS,
11 AGENTS, INFORMANTS, AND SOURCES

12 “SEC. 601. (a) Whoever, having or having had author-
13 ized access to classified information that identifies a covert
14 agent, intentionally discloses any information identifying such
15 covert agent to any individual not authorized to receive clas-
16 sified information, knowing that the information disclosed so
17 identifies such covert agent and that the United States is
18 taking affirmative measures to conceal such covert agent’s
19 intelligence relationship to the United States, shall be fined
20 not more than \$50,000 or imprisoned not more than ten
21 years, or both.

22 “(b) Whoever, as a result of having authorized access to
23 classified information, learns the identity of a covert agent
24 and intentionally discloses any information identifying such
25 covert agent to any individual not authorized to receive clas-

1 sified information, knowing that the information disclosed so
2 identifies such covert agent and that the United States is
3 taking affirmative measures to conceal such covert agent's
4 intelligence relationship to the United States, shall be fined
5 not more than \$25,000 or imprisoned not more than five
6 years, or both.

7 ~~"(e) Whoever, in the course of a pattern of activities~~
8 ~~intended to identify and expose covert agents and with~~
9 ~~reason to believe that such activities would impair or impede~~
10 ~~the foreign intelligence activities of the United States, dis-~~
11 ~~closes any information that identifies an individual as a covert~~
12 ~~agent to any individual not authorized to receive classified~~
13 ~~information, "(c) Whoever, in the course of an effort to iden-~~
14 ~~tify and expose covert agents with the intent to impair or~~
15 ~~impede the foreign intelligence activities of the United States~~
16 ~~by the fact of such identification and exposure, discloses to~~
17 ~~any individual not authorized to receive classified informa-~~
18 ~~tion, any information that identifies an individual as a~~
19 ~~covert agent, knowing that the information disclosed so iden-~~
20 ~~tifies such individual and that the United States is taking~~
21 ~~affirmative measures to conceal such individual's classified~~
22 ~~intelligence relationship to the United States, shall be fined~~
23 ~~not more than \$15,000 or imprisoned not more than three~~
24 ~~years, or both.~~

1 “DEFENSES AND EXCEPTIONS

2 “SEC. 602. (a) It is a defense to a prosecution under
3 section 601 that before the commission of the offense with
4 which the defendant is charged, the United States had public-
5 ly acknowledged or revealed the intelligence relationship to
6 the United States of the individual the disclosure of whose
7 intelligence relationship to the United States is the basis for
8 the prosecution.

9 “(b)(1) Subject to paragraph (2), no person other than a
10 person committing an offense under section 601 shall be sub-
11 ject to prosecution under such section by virtue of section 2
12 or 4 of title 18, United States Code, or shall be subject to
13 prosecution for conspiracy to commit an offense under such
14 section.

15 “(2) Paragraph (1) shall not apply in the case of a
16 person who acted in the course of a pattern of activities in-
17 tended to identify and expose covert agents and with reason
18 to believe that such activities would impair or impede the
19 foreign intelligence activities of the United States.

20 “(c) It shall not be an offense under section 601 to
21 transmit information described in such section directly to the
22 Select Committee on Intelligence of the Senate or to the Per-
23 manent Select Committee on Intelligence of the House of
24 Representatives.

1 “(d) It shall not be an offense under section 601 for an
2 individual to disclose information that solely identifies himself
3 as a covert agent.

4 “PROCEDURES FOR ESTABLISHING COVER FOR
5 INTELLIGENCE OFFICERS AND EMPLOYEES

6 “SEC. 603. (a) The President shall establish procedures
7 to ensure that any individual who is an officer or employee of
8 an intelligence agency, or a member of the Armed Forces
9 assigned to duty with an intelligence agency, whose identity
10 as such an officer, employee, or member is classified informa-
11 tion and which the United States takes affirmative measures
12 to conceal is afforded all appropriate assistance to ensure that
13 the identity of such individual as such an officer, employee,
14 or member is effectively concealed. Such procedures shall
15 provide that any department or agency, *other than the Peace*
16 *Corps*, designated by the President for the purposes of this
17 section shall provide such assistance as may be determined
18 by the President to be necessary in order to establish and
19 effectively maintain the secrecy of the identity of such indi-
20 vidual as such an officer, employee, or member.

21 “(b) Procedures established by the President pursuant to
22 subsection (a) shall be exempt from any requirement for pub-
23 lication or disclosure.

1 “EXTRATERRITORIAL JURISDICTION

2 “SEC. 604. There is jurisdiction over an offense under
3 section 601 committed outside the United States if the indi-
4 vidual committing the offense is a citizen of the United States
5 or an alien lawfully admitted to the United States for perma-
6 nent residence (as defined in section 101(a)(20) of the Immi-
7 gration and Nationality Act).

8 “PROVIDING INFORMATION TO CONGRESS

9 “SEC. 605. Nothing in this title may be construed as
10 authority to withhold information from the Congress or from
11 a committee of either House of Congress.

12 “DEFINITIONS

13 “SEC. 606. For the purposes of this title:

14 “(1) The term ‘classified information’ means infor-
15 mation or material designated and clearly marked or
16 clearly represented, pursuant to the provisions of a
17 statute or Executive order (or a regulation or order
18 issued pursuant to a statute or Executive order), as re-
19 quiring a specific degree of protection against un-
20 authorized disclosure for reasons of national security.

21 “(2) The term ‘authorized’, when used with re-
22 spect to access to classified information, means having
23 authority, right, or permission pursuant to the provi-
24 sions of a statute, Executive order, directive of the
25 head of any department or agency engaged in foreign

1 intelligence or counterintelligence activities, order of
2 any United States court, or provisions of any rule of
3 the House of Representatives or resolution of the
4 Senate which assigns responsibility within the respec-
5 tive House of Congress for the oversight of intelligence
6 activities.

7 “(3) The term ‘disclose’ means to communicate,
8 provide, impart, transmit, transfer, convey, publish, or
9 otherwise make available.

10 “(4) The term ‘covert agent’ means—

11 “(A) an officer or employee of an intelligence
12 agency or a member of the Armed Forces as-
13 signed to duty with an intelligence agency—

14 “(i) whose identity as such an officer,
15 employee, or member is classified informa-
16 tion, and

17 “(ii) who is serving outside the United
18 States or has within the last five years
19 served outside the United States; or

20 “(B) a United States citizen whose intelli-
21 gence relationship to the United States is classi-
22 fied information, and—

23 “(i) who resides and acts outside the
24 United States as an agent of, or informant or

1 source of operational assistance to, an intelli-
2 gence agency, or

3 “(ii) who is at the time of the disclosure
4 acting as an agent of, or informant to, the
5 foreign counterintelligence or foreign
6 counterterrorism components of the Federal
7 Bureau of Investigation; or

8 “(C) an individual, other than a United
9 States citizen, whose past or present intelligence
10 relationship to the United States is classified in-
11 formation and who is a present or former agent
12 of, or a present or former informant or source of
13 operational assistance to, an intelligence agency.

14 “(5) The term ‘intelligence agency’ means the
15 Central Intelligence Agency, a foreign intelligence
16 component of the Department of Defense, or the for-
17 eign counterintelligence or foreign counterterrorism
18 components of the Federal Bureau of Investigation.

19 “(6) The term ‘informant’ means any individual
20 who furnishes information to an intelligence agency in
21 the course of a confidential relationship protecting the
22 identity of such individual from public disclosure.

23 “(7) The terms ‘officer’ and ‘employee’ have the
24 meanings given such terms by sections 2104 and 2105,
25 respectively, of title 5, United States Code.

1 “(8) The term ‘Armed Forces’ means the Army,
2 Navy, Air Force, Marine Corps, and Coast Guard.

3 “(9) The term ‘United States’, when used in a ge-
4 ographic sense, means all areas under the territorial
5 sovereignty of the United States and the Trust Terri-
6 tory of the Pacific Islands.

7 “(10) The term ‘pattern of activities’ requires a
8 series of acts with a common purpose or objective.”.

9 (b) The table of contents at the beginning of such Act is
10 amended by adding at the end thereof the following:

“TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY
INFORMATION

“Sec. 601. Protection of identities of certain United States undercover intelligence
officers, agents, informants, and sources.

“Sec. 602. Defenses and exceptions.

“Sec. 603. Procedures for establishing cover for intelligence officers and employees.

“Sec. 604. Extraterritorial jurisdiction.

“Sec. 605. Providing information to Congress.

“Sec. 606. Definitions.”.

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